In the Supreme Court
OF THE
United States

OCTOBER TERM, 1927.

Nos. 146 and 173.

HENRY WILSON, F. A. WILSON, W. T. WILSON, et al., *Petitioners,* vs. PACIFIC MAIL STEAMSHIP COMPANY, STEAMSHIP "NEWPORT", her engines, boilers, tackle, etc., and J. MCKINNON, Master of said vessel, *Respondents.*	No. 146
PACIFIC MAIL STEAMSHIP COMPANY, Claimant of the Steamship "Newport", her engines, boilers, tackle, etc., and J. MCKINNON, Master of said vessel, *Cross-Petitioners,* vs. HENRY WILSON, F. A. WILSON, W. T. WILSON, et al., *Cross-Respondents.*	No. 173

Supplementary Memorandum for Cross Respondents in Case No. 173.

The brief on behalf of the Svea maintains that enactments of other maritime nations hold the master respon-

sible for the torts of the crew. This may be true as to some other maritime nations. It is not true of all. The master is not so liable for example, in Belgium, Spain, Italy and Germany.

The Belgian Code of Commerce, Book II, Title VIII, Art. 230, specifically provides that in cases of collision

> "The commander incurs no personal liability unless there has been some default or neglect on his own part." (F. W. Raikes, The Maritime Codes of Holland and Belgium, p. 186, Effingham Wilson, London).

The Code of Commerce of The Kingdom of Spain, Book III, Title IV, Section III, Art. 826, provides that the *owner* of a vessel at fault for collision is liable for damages. In Section III (on Collisions) there is no mention of any personal liability of the master. (F. W. Raikes, The Maritime Codes of Spain and Portugal, p. 87, Effingham Wilson, London.) In the section on Commanders (ibid, p. 22), Art. 620 provides that a commander is liable *for his own defaults.*

In the Code of Commerce of Italy in the Chapter of Collisions, Book II, Title VIII, we find that Art. 661 provides that the ship is liable in damages for collision, and Art. 663 provides that the *actual wrongdoers* are also liable.

In the chapter on Commanders, Title II, we find that Art. 496 provides that the Commander is responsible *for his own defaults.* (F. W. Raikes, The Maritime Codes of Italy, Effingham Wilson, London.)

The Svea's brief (p. 36) asserts that the law of Germany provides that the master "cannot delegate the navi-

gation of the ship without personal liability to other persons (except in case of compulsory pilotage)." This is undoubtedly true and would be true under our law. (See, *The Oregon,* 158 U. S. 186.) But we submit that under the Commercial Code of Germany a shipmaster is *not* liable for the defaults of the mariners.

Art. 485 of the Commercial Code for the German Empire (The Commercial Code for the German Empire, Bernard A. Platt, Chapman & Hall, London) provides that the *owner* is responsible for any damage caused by a member of the crew to third parties.

Art. 734 provides that the *owner* of a vessel is liable for a collision caused through the fault of any one employed on the ship. The same article also provides that the persons actually at fault are also responsible.

Art. 511 provides that the *captain* is answerable for all damage occurring due *to his own fault.*

Respectfully submitted,

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